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No. 90-1126

Supreme Court, U.S.
FILED
AUG 12 1991
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In The

Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE SMITH,

Petitioners,

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES, constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET, constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

On Writ Of Certiorari
To The Supreme Court Of Illinois

BRIEF OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, AND DAVID BARRERA ON THE MERITS

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I. The Controversy is Moot.

There is no outstanding issue to be resolved and no form of remedy to be granted. There is no controversy. This case involves the eligibility of candidates in the November 6, 1990 general election for Cook County Board. The Supreme Court of Illinois denied access to the Harold Washington Party (HWP) because it used the name of an established party and because its petition did not contain the requisite 25,000 signatures from suburban Cook County in addition to 25,000 signatures from the City of Chicago. However, by order of the Court, entered October 25, 1990, the judgment of the Illinois Supreme Court was stayed and the HWP appeared on the November 1990 ballot and participated in the general election for Cook County Board. The HWP slate was resoundingly defeated in that election. The issue of whether the HWP party should have been authorized to appear on the ballot is moot.

Petitioners claim there is "great uncertainty on the manner in which new political party candidates obtain access of ballot." There is no uncertainty about how candidates may obtain access to the general ballot. The rules are clear. The statute provides three distinct methods by which a candidate may be placed upon the general election ballot. First, the candidate may run in the primary of an established political party and win a place on the ballot of the general election. Second, the candidate may run as an "independent" candidate by obtaining the requisite signatures from the general voting population of that district. Third, the candidate may run under a "new" political party as long as that party has obtained sufficient signatures to designate an "interest" in that party.

Each of these methods is reasonable, realistic, and feasible. If HWP had followed the Election Code procedures, it would have gained rightful access to the November ballot.

Petitioners also claim that controversies will continue to occur without a determination of this case. This is the first time that such a controversy has occurred in Cook County. The reason that a controversy did occur was that the HWP violated the Illinois Election Code. Such a controversy will not occur again if this Court adopts a policy which requires all election candidates to adhere to the election rules codified in the Illinois Election Code.

II. The "Party Name" Issue

The judgment of the Illinois Supreme Court was based only upon state grounds. It did not involve any federal question, let alone a substantial federal question. Under these circumstances, the Court has regularly declined review. *See Uhler v. AFL-CIO*, 468 U.S. 1310, 1311 (1984); *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945).

The Illinois Supreme Court ruled that petitioners violated the Illinois Election Code requirement that a petition for creation of a new political party "[s]hall not bear the same name as, nor include the name of any established political party as defined in this Article." 46 Ill. Rev. Stat. § 10-5. The purposes of § 10-5 are to avoid the perpetration of a fraud upon the electorate, to stem voter confusion, and to prevent splintered parties and unrestrained factionalism. *Stevenson v. State Board of Election*, 638 F. Supp. 547 (N.D. Ill.), *aff'd*, 794 F.2d 1176 (7th Cir. 1986); *Doty v. Representation For Every Person (R.E.P.)*

Party, 97 Ill.App.3d 316 (1st Dist. 1981); *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014 (3rd Dist. 1983); *Ballentine v. Bardwell*, 132 Ill.App.3d 1033 (1st Dist. 1985).

Timothy Evans' Harold Washington Party was and is an established political party in Chicago. It was and is different from R. Eugene Pincham's Harold Washington Party. By choosing the name of an established party, Mr. Pincham directly violated the statute. Mr. Pincham could have avoided the statutory bar by taking a different name for his party. He chose not to do so and thereby disqualified himself and his party.

The confusion and mischief of two Harold Washington Parties is obvious. Under present circumstances, the established city-wide "Tim Evans" Harold Washington Party and the new city-wide and county-wide "R. Eugene Pincham" Harold Washington Party are separate and distinct political entities, each of which is entitled to run candidates in all ensuing municipal elections for Chicago city officials. Two parties with separate sets of candidates running under the same name is simply antithetical to a free and informed electoral process.

Section 10-5 plays no favorites. It similarly prevents someone from forming another and new Republican Party or another and new Democratic Party and running as a republican or democrat. If Mr. Pincham is allowed to form his own Harold Washington Party and field a slate of candidates, then anyone can form their own Republican Party or Democratic Party and run as a republican and a democrat. This is obviously intolerable and, in fact,

anti-democratic. This is precisely the sort of confusion the statute was designed to prevent.

III. The "Signature" Issue

The Illinois Election Code requires that, before a new political party may field a slate of candidates, it must file nominating petitions signed by at least 5% of the voters in each district in which it intends to run.

Pursuant to § 1-3 (14) of the Illinois Election Code, Cook County consists of two political districts: the City of Chicago and suburban Cook County. As applied to Cook County and Chicago, the Election Code essentially requires that the new political party must file nominating petitions with 25,000 city signatures and 25,000 suburban signatures. This requirement has been reviewed and found to be constitutional and reasonable. *Black v. Cook County Officers Electoral Board*, 750 F. Supp. 901 (N.D. Ill. 1990).

Petitioners obtained approximately 7,560 suburban signatures. They therefore failed to obtain the necessary 25,000 suburban signatures required by § 10-2.

Citing *Illinois State Board of Elections v. Socialist Worker's Party*, 440 U.S. 173 (1979), petitioners first contend that a new political party in Illinois need only obtain a total of 25,000 signatures from city or county voters.

Petitioner's legal reliance and analysis are wrong. *Socialist Worker's Party* does not support them. In that case, the Court ruled that, unless there was a compelling state interest, Illinois could not impose a more stringent signature requirement upon new political parties and independent candidates in Chicago than it imposed upon

new political parties and independent candidates seeking State-wide office.

In the instant case, the reason for the 25,000 signature requirement *per* district is both clear and reasonable. A 25,000 signature requirement for each district guarantees that, before it is placed on the ballot, the new party must have some support from the voters of that district.

In 1986 (the last election at which Cook County Commissioners were elected), 1,476,370 people voted. 841,085 city ballots and 635,285 suburban ballots were cast. Given this substantial number of votes in both the city and the suburbs, the 25,000 signature requirement is a very modest one. Indeed, petitioners' approximately 44,000 city signatures plainly demonstrate that the 25,000 signature requirement for a district the size of Chicago or suburban Cook County can easily be attained with any sort of political support.

That fact was recognized by the Illinois General Assembly when, following the decision in *Socialist Workers' Party*, the Legislature amended § 10-2 of the Election Code which added the following sentence to paragraph 4 of § 10-2:[1]

> However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide general election, such State-wide petition signature requirement shall be the minimum for such

---

[1] Section 10-2 provides that the nominating petition of a new State-wide political party must be signed "by 1% of the number of voters who voted at the last preceding State-wide general election or 25,000 qualified voters, whichever is less."

> district or political subdivision new political party petition.

Public Act No. 81-926, effective September 11, 1979.

The General Assembly, however, did not amend that portion of § 10-2 which requires the double 25,000 signature requirements at issue in this case. Demanding minimum demonstration of voter support protects the integrity of the electoral process. The Court has found this to be a compelling state interest. *American Party of Texas v. White*, 415 U.S. 767, 783, n. 14 (1974). As the court explained in *Stevenson v. State Board of Elections*, 638 F.Supp. 547, 553-554 (N.D. Ill.) *aff'd*, 794 F.2d 1176 (7th Cir. 1986):

> One such interest is to prevent splintered parties and unrestrained factionalism. Id. at 735, 94 S.Ct. at 1281. *Anderson v. Clebrezze*, 460 U.S. at 803, 103 S.Ct. at 1577. As has been stated before, the Supreme Court in *Storer* recognized as legitimate the state's goal of discouraging independent candidacies prompted by short-term political goals, pique, or personal quarrel. *Storer* at 735, 94 S.Ct. at 1281; *Anderson*, at 803, 103 S.Ct. at 1577. Splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See the Federalist, No. 10 (Madison). There are further substantial state interests at stake: encouraging compromise and political stability; attempting to ensure that the election winner will represent a majority of the community; and providing the electorate with a ballot that will eliminate voter confusion. *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Bullock v. Carter, supra*, at 145, 92 S.Ct. at 856.

The Supreme Court decisions in *Anderson supra; Storer, supra; Rosario, supra;* and *Jenness, supra*, all support the position taken herein. Accordingly, the interests of ballot integrity, political stability, and voter representation all reflect legitimate state interests to be advanced by statute.

Petitioners argue that Illinois may not insist upon any showing of support from both districts because to do so would exceed the State-wide minimum. The Seventh Circuit has twice rejected this argument. *See Bowe v. Board of Election Commissioners of City of Chicago*, 614 F.2d 1147 (7th Cir. 1980) and *Gjersten v. Board of Election Commissioners of City of Chicago*, 791 F.2d 472 (7th Cir. 1986). In *Bowe*, the Seventh Circuit stated:

> The plaintiffs apparently take the position that the *Socialist Worker's Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivision. We cannot agree.

614 F.2d 1147, 1151

Bowe is also instructive for another reason. The requirement that a county-wide new political party must meet a 5% signature requirement in both the city and suburban districts is a proper legislative one to assure that the new party can show:

> a significant modicum of support. . . . Thus substantial minimum signature requirements serve compelling State interests, and the only question is whether the specific percentage chosen serves the State's compelling interests in a reasonable manner.

614 F.2d at 1151

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Section 10-2's double 25,000 signature requirement answers *Bowe's* "only question" in the affirmative. It simply requires that a new political party must show "a significant modicum of support" in Chicago and in suburban Cook County. This is reasonable and serves a compelling State interest. Section 10-2 comports with the *Socialist Worker's Party* case and its progeny and should be followed.

Anderson v. Schneider, 67 Ill.2d 165 (1977) was properly found by the lower courts to be inapposite. *Anderson* considered the Election Code requirement that a new political party petition must contain a "complete list of candidates." In *Anderson*, the question was whether the ineligibility of one candidate on a new party petition renders all candidates ineligible. *Anderson* held that, when a candidate was ineligible, the eligible candidates would not be punished and their petitions would be honored. In this case, all of the candidates were declared ineligible because they all failed to file the requisite number of signatures.

It is clear, therefore, that both the Supreme Court of Illinois and the United States District Court ruled properly in holding that the signature requirements were reasonable, served compelling state interests and were, therefore, constitutional.

IV. Access to the Ballot

The First, Fourteenth, and Fifteenth Amendments to the Constitution mandate an electoral process which provides political "access" to all citizens. To provide access, a state has a special interest in creating a structuralized electoral process. The election rules as codified in the Illinois Election Code are intended to provide structure to

the election process and to ensure that access of candidates does not disrupt the electoral process.

The Election Code, as it now stands, does not violate constitutional principles because it allows access to political candidates and political parties. There is no ambiguity in the Illinois Election Code. The Code enumerates three specific and clear procedures which every political candidate and every political party shall follow before obtaining access to the general ballot.

The Constitution grants access to individuals seeking to become involved in the governmental process. The Constitution does not grant special treatment to political candidates or political parties who do not follow the rules. HWP sought nomination of Cook County Offices, but did not adhere to the required procedures, which has past constitutional muster. *See Black, supra*. HWP did not obtain the requisite number of signatures as mandated under the Election Code. HWP sought nomination under the name of an established and separate political party already existing in the City of Chicago in violation of the Election Code. Consequently, HWP was properly denied access to the general election ballot.

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